

## Message Text

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----- 027330

R 03,021Z MAY 74

FM SECSTATE WASHDC

TO AMEMBASSY BONN

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JOINT STATE/TREASURY/DEFENSE MESSAGE

E.O. 11652:GDS

TAGS: GER MIL EGEN

SUBJECT: U.S. DEPENDENTS EMPLOYED BY MILITARY  
BANKING FACILITIES

1. DEFENSE DESIRES TO SYSTEMATIZE COMPENSATION AND  
EMPLOYMENT PRACTICES APPLICABLE TO U.S. DEPENDENTS EMPLOYED  
BY BANKING ESTABLISHMENTS WHOSE ACTIVITY IS ENTIRELY  
LIMITED TO SERVING THE NEEDS AND CONVENIENCE OF U.S.  
FORCES STATIONED IN GERMANY. ALTHOUGH PRIVATE IN NATURE,  
THESE BANKS ACT AS THE FINANCIAL AGENT OF THE USG PURSUANT  
TO CONTRACT WITH THE TREASURY DEPARTMENT BY WHOM THEY ARE  
SUBSIDIZED. THIS DESIRE IS BASED ON OUR BELIEF THAT IT IS  
DESIRABLE TO FOLLOW A UNIFORM POLICY WITH RESPECT TO  
TREATMENT OF U.S. DEPENDENT EMPLOYEES OF ACTIVITIES THE  
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SOLE FUNCTION OF WHICH IS TO PROVIDE NECESSARY SERVICES FOR U.S. FORCES AND WHICH SERVE NO OTHER PURPOSE OR CLIENTELE. THE BANKING ESTABLISHMENTS INVOLVED HERE ARE SUCH INSTITUTIONS, AND TO THAT EXTENT ARE ANALOGOUS TO NON-APPROPRIATED FUND ACTIVITIES EVEN THOUGH PRIVATELY OWNED AND ADMINISTERED. MOREOVER, AS THE BEARER OF THE ULTIMATE FINANCIAL BURDEN OF THEIR OPERATION, THE USG HAS A LEGITIMATE INTEREST IN THE FORMULATION OF COMPENSATION AND EMPLOYMENT POLICY APPLICABLE TO U.S. DEPENDENT EMPLOYEES. CONVERSELY, FRG INTEREST IN APPLYING LOCAL LABOR LAWS TO U.S. DEPENDENT EMPLOYEES OF THESE BANKS WOULD APPEAR TO BE MINIMAL SINCE BANKS SERVE ONLY OFFICIAL

S COMMUNITY AND INDIVIDUAL BANK EMPLOYEES ARE PRESENT IN FRG ONLY FOR LIMITED TIME IF THEY ARE DEPENDENTS OF U.S. EMPLOYEES AND MEMBERS OF U.S. FORCES ON ROTATIONAL ASSIGNMENTS. HENCE, WE WOULD WISH TO AVOID HAVING GERMAN LABOR LAW APPLIED TO THESE EMPLOYEES.

2. ALTHOUGH WE CONSIDER THAT ARTICLE 71 OF THE SUPPLEMENTARY SOFA PROVIDES AN ADEQUATE LEGAL BASIS FOR EXEMPTING U.S. DEPENDENT EMPLOYEES OF NON-APPROPRIATED FUND ACTIVITIES FROM GERMAN LABOR LAW (SINCE UNDER ARTICLE 71 AS WELL AS FOR USG INTERNAL PURPOSES SUCH ACTIVITIES ARE CONSIDERED TO BE "INTEGRAL PARTS" OF U.S. FORCES AND AS SUCH ENTITLED TO THE ATTENDANT BENEFITS) IT IS LESS CLEAR THAT ARTICLE 72, DEALING WITH THESE BANKS AS "NON-GERMAN COMMERCIAL ORGANIZATIONS", IMPLIES A LIKE EXEMPTION FOR U.S. DEPENDENT EMPLOYEES OF THESE BANKS. IN ANY CASE IT IS DOUBTFUL WHETHER THE GERMAN AUTHORITIES WOULD ACCEPT AN ARGUMENT BASED ON THE SUPPLEMENTARY SOFA ALONE THAT GERMAN LABOR LAW DOES NOT APPLY TO SUCH EMPLOYEES. MOREOVER, WE WOULD BE RELUCTANT TO PRESS SUCH AN ARGUMENT IF IN SO DOING GERMAN ATTENTION WOULD LIKELY BE FOCUSED UPON THE EXEMPTION OF NON-APPROPRIATED FUND EMPLOYEES UNDER ARTICLE 71.

3. WE FEEL, THEREFORE, THAT THE BETTER COURSE WOULD BE TO SEEK AN ADMINISTRATIVE AGREEMENT UNDER PARAGRAPH 1(C) OF ARTICLE 72, WHICH WOULD ESTABLISH AN AGREED COMPENSATION AND EMPLOYMENT SCHEME APPLICABLE TO U.S. DEPENDENTS LIMITED OFFICIAL USE

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EMPLOYED BY THE MILITARY BANKS. SPECIFICALLY, WE ENVISAGE THAT SUCH AN AGREEMENT WOULD ENABLE THOSE BANKS TO FOLLOW A COMPENSATION AND EMPLOYMENT PLAN SIMILAR TO THAT APPLICABLE NOW TO U.S. DEPENDENT EMPLOYEES OF NON-APPROPRIATED FUND ACTIVITIES. WE WOULD HOPE THAT IN THIS WAY ADMINISTRATIVE COMPLICATIONS COULD BE AVOIDED, FRG'S INTEREST IN EMPLOYMENT PRACTICES OF ENTITIES

OPERATING WITHIN ITS TERRITORY WOULD BE SATISFIED, AND  
PROVISION WOULD BE MADE FOR UNIFORMITY OF TREATMENT OF  
U.S. DEPENDENTS EMPLOYED IN ACTIVITIES SOLELY SERVING  
U.S. FORCES IN GERMANY.

4. EMBASSY IS REQUESTED TO ADVISE ASAP ON FEASIBILITY  
OF INSTITUTING EARLY DISCUSSIONS WITH THE FRG ON THIS  
MATTER AND IN THAT CONNECTION TO ADVISE WITH RESPECT TO  
EARLIEST DATE SUCH DISCUSSIONS CAN BE INITIATED. REPRESENTATIVES OF DEFENSE AND TREASURY ARE PREPARED TO BRIEF  
EMBASSY FURTHER AND PROVIDE ON-SITE TECHNICAL SUPPORT IN  
DISCUSSIONS WITH FRG.  
DECON AFTER DEC 31, 1976 RUSH

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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* LIMITED OFFICIAL USE

## Message Attributes

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